

REMARKS

This is in response to the Advisory Action dated October 9, 2008 and the Office Action dated June 12, 2008 in which claims 1-4 were rejected under 35 U.S.C. § 102(b) as being anticipated by Sperl (U.S. Patent No. 2,969,011) and claims 1-5, 10-12 and 16-21 were rejected under 35 U.S.C. § 102(e) as being anticipated by Sculuca (U.S. Patent No. 7,107,898). Claim 12 has been canceled. Claims 1, 10 and 19-21 have been amended to require a connector connecting the base to the support. Support for these amendments is found in the Published Application.

Connector 14 is attached to one side of base 12 such that connector 14 slopes above base 12. Support 16 is attached to the opposite side of connector 14 such that it is elevated above and off-center over base 12.

See Published Application at [0009].

In reliance on the following remarks, the present application with pending claims 1-5, 10, 11 and 16-21 is in condition for allowance, and reconsideration and notice to that effect are respectfully requested.

Rejection of Claims 1-4 under 35 U.S.C. § 102(b)

In the Office Action, independent claim 1 and dependent claims 2-4 were rejected under 35 U.S.C. § 102(b) as being anticipated by Sperl (U.S. Patent No. 2,969,011). According to MPEP §2131, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

As amended, claim 1 requires a baking tray having a base, a connector attached to an end of the base at a first bend where the connector and the base form an acute angle, and a generally angled support attached to the connector at a second bend where the support and connector form an angle less than 180 degrees. The support has at least one aperture spaced vertically from the base for inserting a stick or skewer.

Sperl describes a skewer unit for handling and serving flaming foods. The Office Action asserts that Sperl describes a base (bottom wall of element 6), an angled support (right

sidewall of element 6 and socket 7) and an aperture (socket 7). However, Sperl does not describe a connector attached to an end of the base at a first bend such that the connector and the base form an acute angle. Sperl does not disclose the connector required by claim 1. The only element Sperl describes that extends from the base and forms an acute angle with the base is socket 7. However, if socket 7 satisfies the connector limitation, no other element in Sperl describes an angled support having at least one aperture and attached to the connector at a second bend where the angled support and the connector form an angle less than 180 degrees. Thus, Sperl does not describe a baking tray having a base, a connector attached to an end of the base at a first bend where the connector and the base form an acute angle, and a generally angled support attached to the connector at a second bend where the angled support and connector form an angle less than 180 degrees.

In that independent claim 1 is in condition for allowance, the rejections to claims 2-4, which depend therefrom, should be withdrawn and claims 1-4 allowed.

Rejection of Claims 1-5, 10-12 and 16-21 under 35 U.S.C. § 102(e)

In the Office Action, independent claims 1, 10 and 19 and dependent claims 2-5, 11, 12, 16-18, 20 and 21 were rejected under 35 U.S.C. § 102(e) as being anticipated by Sculuca (U.S. Patent No. 7,107,898). Claim 12 has been cancelled.

As amended, claim 1 requires a baking tray having a base, a connector attached to an end of the base at a first bend where the connector and the base form an acute angle, and a generally angled support attached to the connector at a second bend where the support slopes above the connector and the support and connector form an angle less than 180 degrees. The support has at least one aperture spaced vertically from the base for inserting a stick or skewer.

Sculuca describes a skewer holder. The Office Action asserts that Sculuca describes a base (121), an angled support (126 or 127) and an aperture (124). However, Sculuca does not describe an angled support attached to the connector at a second bend such that the support slopes above the connector and the support and connector form an angle less than 180 degrees. Support element 126 is attached to an end of base plate 121 and slopes above base plate

121. From the top end of support element 126, mesh steel piece 125 extends downward to base plate 121. The element extending downward from support element 126 does not slope above support element 126. Hence, the element extending downward from support element 126 does not describe the angled support required by claim 1. Thus, Sculuca does not describe a baking tray having a base, a connector attached to an end of the base at a first bend where the connector and the base form an acute angle, and a generally angled support attached to the connector at a second bend where the support slopes above the connector.

As amended, claim 10 requires a device having a base, a connector attached to an end of the base at a first bend where the connector and the base form an acute angle, and a support forming an inverted V-shape having first and second inclined sloped sides forming an apex at an upper end where the first sloped side is attached to the connector at a second bend and slopes above the connector. The device has at least one aperture on the support and spaced vertically from the base for receiving a stick or skewer with food and supporting the stick or skewer with food in a cantilevered fashion.

Sculuca does not describe both a connector attached to an end of the base where the connector slopes above the base and forms an acute angle with the base and a support forming an inverted V-shape having first and second inclined slopes forming an apex at an upper end where the first sloped side is attached to the connector and slopes above the connector. While support element 126 may satisfy the limitations of a connector attached to an end of the base where the connector and the base form an acute angle, Sculuca does not further describe a support forming an inverted V-shape having first and second inclined slopes forming an apex at an upper end where the first sloped side slopes above the connector. While support element 126 and the element extending downward from support element 126 may describe a support forming an inverted V-shape, Sculuca does not further describe a connector attached to an end of the base such that the connector forms an acute angle with the base. Thus, Sculuca does not describe both a connector attached to an end of the base such that the connector and the base form an acute angle *and* a support forming an inverted V-shape having first and second inclined slopes forming an apex at an upper end where the first sloped side slopes above the connector.

As amended, claim 19 requires a baking tray having a base; a first planar surface where the first planar surface is attached to the base at a first bend and the first planar surface and the base form an acute angle; a second planar surface attached to the first planar surface at a second bend where the second planar surface slopes above the first planar surface, and a third planar surface attached to the second planar surface where the second and third planar surfaces form an inverted V-shape. The second planar surface has at least one aperture spaced vertically from the base and configured to receive a stick or skewer.

Sculuca does not describe both a first planar surface attached to the base where the first planar and the base form an acute angle, and a second planar surface attached to the first planar surface where the second planar surface slopes above the first planar surface. While support element 126 may satisfy the limitations of a first planar surface attached to the base where the first planar surface slopes and the base form an acute angle, Sculuca does not further describe a second planar surface attached to the first planar surface where the second planar surface slopes above the first planar surface. While support element 126 and the element extending downward from support element 126 may describe a second planar surface and a third planar surface forming an inverted V-shape, Sculuca does not further describe a first planar surface attached to the base where the first planar surface and the base form an acute angle. Thus, Sculuca does not describe both a first planar surface attached to the base where the first planar surface and the base form an acute angle *and* a second planar surface attached to the first planar surface where the second planar surface slopes above the first planar surface.

In that independent claims 1, 10 and 19 are in condition for allowance, the rejections to claims 2-5, 11, 16-18, 20 and 21 which depend therefrom, should be withdrawn and claims 1-5, 10, 11 and 16-21 allowed.

Conclusion

In view of the foregoing, pending claims 1-5, 10, 11 and 16-21 are in condition for allowance. Notice to that effect is respectfully requested.

First Named Inventor: Richard Leone

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The Commissioner is authorized to charge any additional fees associated with this paper or credit any overpayment to Deposit Account No. 11-0982.



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Respectfully submitted,

KINNEY & LANGE, P.A.

By: _____

A handwritten signature in black ink, appearing to read "D. Fairbairn", written over a horizontal line.

David R. Fairbairn, Reg. No. 26,047
THE KINNEY & LANGE BUILDING
312 South Third Street
Minneapolis, MN 55415-1002
Telephone: (612) 339-1863
Fax: (612) 339-6580

DRF:MJD:mdh